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FORM NO. 241
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APPROVED FOR RELEASE
DATE: 21-Oct-2009

MEMORANDUM

TO: President
FROM: MGDR
SUBJECT: Federal Aviation Agency Jurisdiction Over
Air America's Foreign Operations

DATE: December 2, 1966
REF. NO.: M026U

As you are aware, early last summer the Federal Aviation Agency advised the Company that all of Air America's charter operations for hire wherever conducted (except those conducted solely within a foreign country) and irrespective of the size of the aircraft operated are under FAA regulatory jurisdiction and should be covered under Air America's Air Carrier Operating Certificate. Their opinion was based upon FAA's broad interpretation of "air commerce" as defined by the Federal Aviation Act of 1958. The FAA admitted that the Act was not clear on this point. However, FAA, as a matter of policy, decided to exercise such jurisdiction and felt that Air America, along with all other carriers similarly situated, should be required to comply.

After a number of meetings on the subject the FAA has modified their position to the extent that operations confined to the three countries of Thailand, Laos and Vietnam and conducted under U.S. Government contracts will not be considered as requiring compliance with, or exemption from Part 121 of the Federal Aviation Regulations. However, operations for hire from those three countries to other areas with U.S. registered aircraft will be required to comply with or be exempted from Part 121. This latter position immediately involves the maintenance ferries to Tainan, which on occasion, carry customer personnel and property to and from destinations such as Hong Kong. In this connection the FAA indicated that they would be willing to grant Air America a blanket exemption from Part 121 for its entire SEA operations as presently conducted. However, if possible we would prefer not to seek such an exemption on the basis that the very assertion of jurisdiction by the FAA and the necessity to obtain an exemption, no matter how broad, is burdensome and in the future will undoubtedly create friction and problems with the FAA.

It would appear to us that we have three alternatives. We can confine SEA operations to Thailand, Vietnam and Laos and discontinue the carriage of customer personnel and cargo in U.S. registered aircraft on Tainan maintenance flights. We can convert to "B" or other registry those aircraft which are utilized for the carriage of customer personnel and cargo on such maintenance flights. We also may accomplish our objective by a combination of the two foregoing alternatives. Finally we can continue operations as they are and obtain an exemption from Part 121.

We have indicated to the FAA that we would advise them of our intended action, in about two weeks, after we have had an opportunity to study the matter. We would like your views on the proposed solutions and their impact on operations and any other solutions or problems which we may have overlooked.

During our meetings with the FAA the issue of compliance with Part 91 of the FAR's was also raised. As you are aware, with limited exceptions, the requirements of Subpart A and C of Part 91 were recently extended to operations with U.S. registered aircraft outside the United States. Consequently, irrespective of the type of operation conducted, Part 91 does apply to Air America just as it does to every other operator of a U.S. registered aircraft. At the same time Part 91 was amended the FAA amended §61.3 of Part 61 so as to require that a pilot in command or any other required pilot flight crew member of U.S. registered aircraft have a FAA certificate or one issued by the country in which the aircraft is being operated.

Although the requirements of Part 91 are limited in comparison to Part 121, from a quick reading it would appear that due to the location and nature of Air America's operation it will need to obtain an exemption from certain of such requirements. We therefore request that the Field review Part 91 and the new requirements of Section 61.3 of Part 61 against Air America's operations and advise us of those provisions from which an exemption is required. In connection with such study we will also need to know, in some detail with concrete examples, the reason such an exemption is required. We have also indicated to the FAA that we would advise them of any required exemption from Part 91 within a couple of weeks.



George A. Doole, Jr.

cc: VPTS (via Pres.)
VPFO " "
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1 December 1966

MEMORANDUM OF MEETING WITH FAA

Subject: Federal Aviation Agency Jurisdiction Over
Air America's Foreign Operations

A further meeting was held at the Federal Aviation Agency on December 1, 1966 on the subject of the Federal Aviation Agency's jurisdiction over operations conducted by Air America outside the United States, its territories and possessions. In attendance were Mr. John H. Shaffer from the FAA Office of International Affairs, Mr. James B. Minor, FAA Associate General Counsel - Regulations Division, Mr. [redacted] Chief of Airmen's and Operations Branch in the Office of General Counsel, Mr. James F. Rudolph Deputy Director - Flight Standards, Mr. [redacted] Assistant Chief - Operations Division and Messrs. George A. Doole, Jr. and James H. Bastian from Air America.

At the opening of the meeting the FAA announced that Air America operations which are conducted under U.S. Government contract and are confined to the countries of Thailand, Vietnam and Laos will not be considered by the FAA as requiring compliance with or exemption from Part 121 of the Federal Aviation Regulations. However, any carriage of persons or property for hire to or from those three countries and other areas with U.S. registered aircraft would be considered "air commerce" and subject to Part 121.

It was pointed out to FAA that during the maintenance ferry from SEA to Tainan Air America's U.S. registered aircraft, on occasion, carry, in addition to company personnel and property, customer personnel and property. The FAA indicated that such an operation, under their policy determination, must comply with or have an exemption from Part 121 of the FAR's. The FAA stated that if necessary, they would be willing to grant Air America a blanket exemption from all the requirements of Part 121 for its entire Southeast Asia operation, including any flights carrying persons and property for hire to or from the area.

It was also pointed out that under recent amendments most of the requirements of Subparts A and C of Part 91 of the FAR's have been

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extended to the operation of U.S. registered aircraft outside the United States. Subpart A of Part 91 prescribes certain operating rules and Subpart C prescribes certain maintenance practices and requirements. The amended Part 91 also requires that the operation of U.S. registered aircraft over the high seas comply with the flight rules prescribed in Annex 2 to the Convention of International Civil Aviation and within a foreign country with the flight rules there in force. At the same time Part 91 was amended Section 61.3 of Part 61, dealing with pilot certification, was also amended to require that a pilot in command or any other required pilot flight crew member of a U.S. registered aircraft have a FAA pilot certificate or a certificate issued by the country in which the aircraft is being operated. Section 61.3 previously prescribed pilot certificate requirements only for the operation of U.S. registered aircraft within the U.S.

Part 91 and Section 61.3 of Part 61 are general regulations which apply to the operation of all U.S. registered aircraft irrespective of whether the aircraft are engaged in "air commerce" and are thereby also subject to Part 121, or are used strictly for private purposes. The requirements of Part 91 are considerably less restrictive than Part 121, however, because of the conditions under which Air America's SEA operations must be conducted it was recognized by FAA that there may be certain provisions of Part 91 from which an exemption would be required.

The following major conclusions were reached as a result of the meeting.

1. Air America operations which are conducted under U.S. Government contract and are confined to the countries of Thailand, Laos and Vietnam will not be considered by FAA as requiring compliance with or exemption from Part 121 of the Federal Aviation Regulations.
2. Air America flights, which carry customer personnel and cargo or other persons and property for hire from Thailand, Vietnam and Laos to other points, are subject to the requirements of Part 121 and the aircraft used therein must either be listed on Air America's Air Carrier Operating Certificate or an exemption from Part 121 obtained from the FAA. In this connection the FAA is willing to grant a blanket exemption from all of the requirements of Part 121 for the entire SEA operation.
3. Air America's SEA operations are subject to the requirements of Parts 91 (General Operating and Flight Rules) and 61 (Pilot Certification) to the extent set forth therein as a result of the September 19, 1966 amendments thereto.

At the close of the meeting it was agreed that Air America would:

1. Determine whether it will confine its operations for hire with U. S. registered aircraft in SEA to Thailand, Vietnam and Laos or seek an exemption from the requirements of Part 121 for such operations; and
 2. Review Part 91 and Section 61.3 of Part 61 to determine if Air America requires any exemption from the provisions of those regulations for its SEA operation and advise FAA accordingly.
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